MONTANA CONSTITUTIONAL CONVENTION

1971-1972

REPORT OF COMMITTEE ON STYLE, DRAFTING, TRANSITION AND SUBMISSION

ON

LOCAL GOVERNMENT

No. XI

Date Reported: March 20, 1972

John M. Schultz, Chairman

William A. Burkhardt, Vice Chairman

TO: Montana Constitutional Convention

SUBJECT: LOCAL GOVERNMENT

Ladies and Gentlemen:

The Committee on Style, Drafting, Transition and Submission transmits revisions of the above Article for consideration of the Convention.

Immediately following this letter you will find the above Article as revised by the Committee. Following that is the Article indicating (by underlining) words we have added and (by crossing out) words we have deleted from the Article as approved. Finally, there is an explanation of the changes we have made.

Sincerely,

John M. Schiltz

John M. Schiltz, Chairman of the Committee on Style, Drafting, Transition and Submission

William A. Burkhardt

William A. Burkhardt, Vice Chairman of the Committee on Style, Drafting, Transition and Submission

BE IT PROPOSED BY THE LOCAL GOVERNMENT COMMITTEE:

That there be a new Article on Local Government to read as follows:

ARTICLE

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties,

and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. GENERAL POWERS. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to

one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Section 9. VOTER REVIEW OF LOCAL GOVERNMENT. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local

government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require a review procedure once every ten years after the first election.

BE IT PROPOSED BY THE LOCAL GOVERNMENT COMMITTEE:

That there be a new Article on Local Government to read as follows:

ARTICLE

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state ~~of Montana as they~~ are those that exist ~~at~~ on the ~~adoption~~ date of ratification of this constitution ~~are the counties of the state~~. No county ~~boundaries~~ boundary ~~shall~~ may ~~not~~ be changed or county seats transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. (1) The legislature shall provide ~~by law~~ methods for ~~the government of~~ governing local government units and ~~for~~ procedures ~~of~~ for incorporating, classifying, merging, consolidating, and dissolving such units, and ~~of~~ altering their boundaries. The legislature shall provide ~~by law for~~ such optional or alternative forms of government ~~for~~ that each unit or combination of units ~~to enable a unit or combination of units to~~ may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court,

a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. ~~whose~~ The terms, qualifications, duties, and compensation of those offices shall be ~~prescribed~~ provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards ~~of-Commissioners~~ of two or more counties may provide for a joint office and for the election of one official to perform the duties of ~~that~~ any such office in ~~the-respective~~ those counties.

Section 4. GENERAL POWERS. (1) A local government units ~~not-exercising~~ without self-government powers ~~under-Sections-5 and-6-shall-have~~ has the following general powers:

~~(1)~~ (a) An incorporated ~~cities-and-towns-shall-have~~ city or town has the powers of a municipal corporation and ~~such~~ legislative, administrative, and other powers ~~as~~ provided or implied by law.

~~(2)~~ (b) A ~~Counties-shall-have-such~~ county has legislative, administrative, and other powers ~~as~~ provided or implied by law.

~~(3) The-powers-of-incorporated-cities-and-towns-and-counties shall-be-liberally-construed.~~

~~(4)~~ (c) Other local government units ~~shall~~ have ~~such~~ powers ~~as~~ provided by law.

~~(3)~~ (2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. SELF-GOVERNMENT CHARTERS. (1) The legislature shall ~~prescribe~~ provide procedures ~~and-may-set-limits-under-which~~ permitting a local government unit or combination of units ~~may~~ to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question.

The prescribed procedures, ~~however,~~ shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions ~~with-respect-to-a-local-government-unit's~~ establishing executive, legislative, and administrative structure and organization ~~shall-be~~ are superior to statutory provisions.

Section 6. SELF-GOVERNMENT POWERS. A local government units adopting a self-government charters may exercise ~~all~~ any powers not prohibited by this constitution, ~~by~~ law, or ~~by~~ charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

~~Section-7.--INTERGOVERNMENTAL-COOPERATION.--A-local government-unit-by-act-of-its-governing-body-may,-or,-upon being-required-by-initiative-or-referendum,-shall-cooperate, consolidate-or-agree-in-the-exercise-of-any-function,-power or-responsibility-with,-or-share-the-service-of-an-officer or-facilities,-or-transfer-or-delegate-any-function,-power or-responsibility-or-duties-of-an-officer-to-one-or-more other-local-government-units,-school-districts,-the-state or-the-United-States,-unless-prohibited-by-law-or-charter.~~

Section 7. INTERGOVERNMENTAL COOPERATION. (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power,

or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to

one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 9. 8 INITIATIVE AND REFERENDUM. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution ~~shall-be-extended-by-law~~ to the qualified ~~voters~~ electors of each local government unit.

Section ~~11~~. 9 VOTER REVIEW OF LOCAL GOVERNMENT. (1) The legislature shall, within four years of the ~~adoption~~ ratification of this constitution, provide ~~for~~ procedures ~~by-which~~ requiring each local government unit or combination of units to ~~either separately-or-jointly-shall~~ review ~~the-government~~ its structure ~~of-the-local-unit-or-joint-unit~~ and ~~shall~~ submit one alternative form of government to the ~~voters~~ qualified electors at the next general or special election.

(2) The legislature shall ~~provide-for~~ require a review procedure ~~each~~ once every ten years after the first election.

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COMMENTS ON STYLE, FORM, AND GRAMMAR

Section 2. Changes in the first sentence specify the date upon which the identity of the counties will be established. The noun "ratification" was substituted for "adoption" because the former is applied by the present constitution to the process which will occur on June 6.

Section 3. Language changes shorten and clarify without altering substance.

Section 4. Changes in language and order do not alter substance.

Section 5. Language changes do not alter substance. The words "may set limits" were removed from subsection (1) for two reasons: 1. The verb shifts from the mandatory "shall" to the permissive "may." 2. The legislature "may set limits" in the usual exercise of its powers without any reference being made thereto.

Section 6. Changes from plural to singular accord with good drafting standards.

Section 7. Reorganizing produces clarity without changing substance.

Section 9. Language changes do not alter substance.